



Legal Views

- ❖ Current Issues
- ❖ Case Notes
- ❖ Counsel Help

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A Resource From Montgomery County's Office of the County Attorney

August 2007

Isiah Leggett, County Executive

Leon Rodriguez, County Attorney

Old Fashioned Etiquette or New-fangled Necessity?

Karen Federman Henry

In recent months, you may have heard increasing mention of document preservation in the context of new litigation rules of procedure, which identify the concerns of electronic discovery and metadata that attaches to all of our electronic documents. As the County pursues its goals of customer service and upgrading its enterprise resources, additional issues of document retention, data security, and privacy become highlighted. While all of these programs seek to ensure the integrity of the records the County creates and maintains—regardless of whether the goal is to track performance, comply with laws and regulations, or respond to discovery—some very simple principles could prove useful in this age of electronic information.

For instance, how many of us omit salutations and other niceties that a formal letter contains because “it is

continued to page 2

Always Look a Gift Horse in the Mouth

Christine Collins

You read the title, and I know what you are thinking. Your mother always taught you that when someone gives you a gift, you accept it graciously and say the proper thank you. So, what if you are a public employee?

Because of the special fiduciary duty that public employees owe to the public, a public employee may not simply accept a gift when it is given. This is because public employees must execute their duties for the good of the public without improper external influences. The receipt of gifts from entities doing business with the government would, at the very least, give the appearance of impropriety.

The Montgomery County Code sets specific guidelines, also referred to as the Ethics Laws, relating to the solicitation of gifts by, as well as receipt of gifts gratuitously given to, public employees. For example, a public employee must not knowingly receive a gift from any organization or individual that does business with the County agency with which the public employee is affiliated, except if the gift is a personal property item, other than cash, with a value less than \$10.

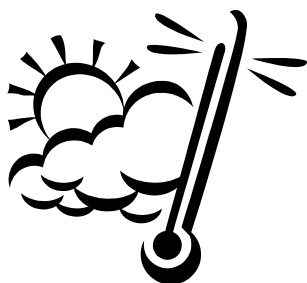
There are other obvious exceptions written into the law, such as solicitations for charitable endeavors or fundraising to support public services. The test is whether the gift solicited or received is one that benefits the public good, as opposed to benefiting an individual employee in an attempt to assert improper influence in future business dealings with the County. Some solicitation efforts must be given specific authority by the County Executive.

continued to page 2

INSIDE THIS ISSUE

2 Protecting County Government From Fraud and Abuse

4 Legal Views News!



only an e-mail”? And how many times have we exchanged comments on a document that include complaints or disparaging remarks because the final document will “remove” those comments? We all lapse into informal and uncensored comments on occasion, but in light of the potential for these items to reach unintended readers through formal discovery or simply through inadvertence, it may be time to renew our proofreading and editing skills—even in comments to a document or in e-mail messages.

If you think about it, an electronic message or a comment on a document reflects our image and professionalism in the same way as the correspondence of the “old” days. When a message is full of typographical errors, abbreviated words (or even thoughts), and disparaging remarks, it gives the reader a negative impression of the person who prepared the item. And when that same type of message reaches additional readers through discovery or other disclosure of materials, we can find our communication being interpreted completely differently from our original intent.

By treating e-mail messages and comments on documents as more formal communications, we can make sure that our messages are clear and less subject to multiple interpretations. Moreover, using simple proofreading and editing skills can alleviate greater concern if the documents are requested through discovery or even a public information request—we can be confident that our documents reflect the integrity and clarity that befits a local government. ❖

Gift Horse*continued from page 1*

While this is a cursory review, the County Code offers thorough guidance in this area of the law, and should be reviewed whenever questions of this nature arise. The Ethics Commission reviews the Ethics Law, while providing advice and granting waivers, as appropriate. Please contact the Commission or the Office of the County Attorney with questions. In summary, as a public employee, the next time you receive a gift, you must look your gift horse in the mouth or risk running afoul of the law. ❖

Montgomery County Code, Chapter 19A-16.

Protecting County Government From Fraud and Abuse

Leon Rodriguez

Montgomery County Executive Leggett and the Montgomery County Council have declared a priority of government accountability to citizens. As reflected in the creation of a 24-hour waste and fraud hotline, this priority includes invigorating tools to combat fraud and abuse, whose victims are the County’s taxpayers and its treasury. Fraud, waste, and abuse are defined by the Inspector General’s Office as follows:

Fraud

A dishonest and intentional course of action that results in obtaining money, property, or an advantage to which the individual committing the action would not normally be entitled.

Waste

The needless, careless, or extravagant expenditure of County funds, incurring of unnecessary expenses, or misuse of County resources or property.

Abuse

The intentionally wrongful or improper use of County resources that can include the excessive or improper use of one’s position, in a manner contrary to its rightful or legally intended use.

While Montgomery County has, historically, been fortunate in avoiding significant fraud on its government, fraud and abuse is a nationwide problem for municipal governments. New York City and Chicago each now have False Claims Acts, which provide for treble damages, as well as substantial per claim penalties, in cases where one of these large cities has been the victim of fraud. These statutes contain whistleblower provisions, which provide for substantial recoveries for any individual who has disclosed evidence of fraud on one of the cities.

This County has various remedies that are available to it when it becomes the victim of fraud and abuse. These remedies cover a wide spectrum, ranging from criminal prosecution for intentionally larcenous conduct, to a

continued to page 3

variety of civil and administrative processes that sanction not only such flagrantly larcenous conduct, but also situations where individuals and entities knowingly obtain County funds, property, or benefits to which they are not entitled.

In addition to or in lieu of possible criminal action, employees involved in fraudulent activity may become subject to adverse personnel action, while contractors involved in fraudulent conduct may be suspended or debarred from pursuing contracts either for a period of years or permanently, pursuant to Section 11B.00.001.18 of the Montgomery County Code of Regulations.

Beyond those remedies in our County statutes, the County can pursue civil lawsuits under common law theories. Under common law fraud causes of action, the County can recover any value that it has lost as a result of fraudulent conduct, and in cases where “actual malice” is present, can recover punitive damages without limit. See *Montgomery Ward v. Frances Wilson*, 339 Md. 701, 728, 66 A.2d 916, 929-930 (1995).

To promote the disclosure of fraud and abuse, County law takes important steps to enable employees to disclose

illegal and improper conduct against the County. Sec. 33-10(a) of the County Code directs employees to “report illegal or improper actions in County Government.” Sec. 33-10(b)-(f) prohibits retaliation against employees who have disclosed such conduct, and provides for the investigation of such retaliation and for sanctions against violators.

Beginning on December 14, 2006, the County, working through the Office of the Inspector General, established the Fraud hotline. The hotline enables County employees and/or contractors to confidentially provide information to the Office of the Inspector General about potential fraud, waste, and abuse. The Office of the Inspector General is independent of the executive branch and maintains all information it receives in confidence. The hotline can receive information via telephone, internet, and e-mail and is available 24 hours a day, seven days a week. The County’s Office of the Inspector General commits itself to evaluating concerns of possible fraud and, when appropriate, to conducting an investigation.

Fraud Hotline Contact Information

Toll-free telephone number: (800) 971-6059

Web access: www.tnwinc.com/webreport

Email address: reportline@tnwinc.com

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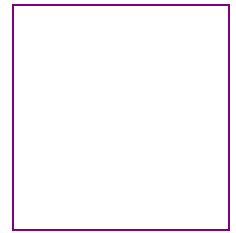
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Legal Views is a monthly newsletter prepared as part of the County Attorney’s preventive law and education efforts. This information is not legal advice, but an informative tool. While we attempt to ensure the accuracy of information, the informal nature of Legal Views does not allow for thorough legal analysis. If you have an interest in a reported article, please contact us. If you wish to be placed on our mailing list, please send your request with your full name, address, and phone number.

The Office of the County Attorney is committed to being a partner to the various components of County Government seeking to protect the County from fraud, waste, and abuse. In egregious cases involving significant financial loss, we are prepared to use all of the legal tools available, including civil litigation, to recover any moneys lost by the County and to secure appropriate sanctions. We will help to make sure that the County is made whole and that fraud against the County is addressed in a manner that deters others from considering similar wrongdoing in the future. ❖



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ADDRESS CORRECTION REQUESTED



Legal Views is moving to a
quarterly schedule. Look for
your next issue in **November**.